B. Group

1943.

File No. S. Dwr. 1/43

Examined

Legal- DEPARTMENT

A -BRANCH

Subject:- Suits - Dharwar

Civil Suit no. 63 of 1942

Rangacharya Raghavendracharya-
Panchamukhi ——— Plff

v/s

(1) The Provincial Govt of Bombay
(2) Antacharya Raghavendracharya-
Panchamukhi
(3) Ramcharya Shreenivascharya
Baichwal & 8 others } Deft.

claim - Rs

P.33=E

File No. S. Dwr. 1/43

Std. Secst. Slip 24-B

CONTENTS

Legal Department file No. S. DWR 1/43

S.No.	Compilation No.	Subject	Page
		Suits Dharwar. C.S.No.63 of 1942.	
1	Printed G.RL.D 802. A. dt.2. 2. 43	Rangacharya R.Panchamukhi versus 1) The Provincial Government of Bombay. 2) Antacharya R. Panchmukhi. 3) Ramcharya. S. Baichawal & Sons Re:For a declaration that the Commissioners order cancelling the grant of certificate V/S of the Bombay Hereditary Offices Act 1875, is Illegal etc.	
		Sanctioning the Defence of the Suit	35

No. 684
Dharwar 2nd September 1942

From

Rao Bahadur B.S.Sawkar, LL.B.,
District Government Pleader,
Dharwar.

To

The Remembrancer of Legal Affairs,
Bombay.

Subject:-Dharwar Civil suit No.63 of 1942.

Sir,

In accordance with Rule 118 of the Law Officers' rules, I have the honour to submit herewith chronological statement of facts grounds of defence, copy of the plaint in English and all the papers (Files I to III)along with one loose paper file, relating to the above suit, for favour of perusal and necessary action.

1. The suit is numbered as Long Cause Civil Suit No.63 of 1942.
2. The suit was filed on 29-6-1942, in the court of the First Class Sub-Judge, Dharwar.
3. Plff:-Rangachanya Raghavendracharya Panchamukhi of Dharwar.

Vs.

Deft:-The Provincial Government of Bombay and 10 others.

4. Value of the claim is Rs.3000/-.
5. The suit is fixed for putting in written statement on 6-10-42
6. Notice under section 80 of the C.P.C. Has been given.

It is submitted, therefore, that the defence of the suit may kindly be sanctioned early, with such alterations and amendments as may be deemed necessary.

Your obedient servant,

District Government Pleader.

Respectfully submitted through the Collector of Dharwar, under Rule 119 of the Law Officers' Rules.

District Government Pleader.

SEP 2 1942

L.C.Suit No.63 of 1942.

In the court of the First Class Sub-Judge, at Dharwar.

Plff:-Rangacharya Raghavendracharya Panchamukhi of Dharwar.

Vs.

Deft:-The Provincial Government of Bombay, and 10 others.

Chronological Statement of facts.

1. The suit is for a declaration that the mortgage-debt incurred on 17-1-1925 by ~~Rangacharya~~ Raghavendra-charya the father of plff and deft 2 from the father of defts 3 to 5 on the security of Patilki watan lands R.S.Nos.2 and 3, situate in the Inam village of Kurvinkop, Taluka Ron, District Dharwar, is not binding on plff and deft 2 and the said debt being not antecedent debt and not being for the benefit of the family of plff and deft 2; (2) that the said lands being assigned for Patilki Watan service for Kurvinkop village, are not liable to be sold in execution of the mortgage decree obtained by the father of defts 3 to 5 in L.C.Suit No.240 of 1937 of ~~Gadag~~ Gadag Sub-Judge's court, against the father of plff and deft 2 & (3) that the orders of the Government of Bombay passed in G.R.R.D. No.4028/F /39 dated 7-11-1940 upholding the orders of the Commissioner, S.D., who in his No.W.T.N.A.R.789 of 3rd February 1940, cancelled the issue of certificate under section 10 of the Bombay Heriditory Offices Act, granted by the Collector of Dharwar, in his No.W.T.N.S. 1415 of 17-4-1939, are ultra vires, inoperative, illegal and (4) for other reliefs and costs of the suit.

2. The Inam village of Kurvinkop having 933 acres and 18 gunthas of land is a surveyed Inam village and the local fund is levied by Government. The Inam register of the village for the year 1905-1906 s

P.17 file II
P.7 file III

measuring in all

that 4 S.Nos. 279 acres 29 gunthas assessed at Rs.332/- are revenue and Police Patilki watan lands useful for village Government service. A sum of Rs.327-8-0 is payable as judee in respect of these lands and there is a net profit of Rs.4-8-0 to the holders of the Watan. It will be seen that S.Nos.2 and 3 acres 34-33 & 28-21 (A-G) Assmt Rs.50 & Rs.28-21 respectively (mortgaged by plff's father) are among the Patilki watan lands. In the village form No.I also these lands (S.Nos.2 and 3) appear to be shown as Patilki Inam lands. They do not appear, howver in the Land alienation register. In the Prati-book prepared in 1866, these two lands have been mentioned as Patilki lands. It appears that in the alienation register the old S.Nos. which were recorded as Patilki judee lands at the time of the original survey in 1884-1885 have been shown, but it appears from the D.I.L.R.'s report at page 59 file III, that so far as these two S. Nos. are concerned there has been no change in the numbering of S.Nos. since 1866. Further during the recent Survey made for the purpose of record of rights these 2 Nos. are shown as assigned for Patilki service.

P.11 & 13 file Do

Col.2,6,7,10,11,15 & 16 of the Inam register

P.57 file III & reverse.

P.59 file III bottom.

(3). It may be mentioned that the whole village of Kurvinkop is a Devasthan Inam of which the plff's family of "Panchamukhis" is the Wahivatdar. The Patilki watan lands in the village appear to be shown as Kadim Inam in the alienation register. The whole village including the judee payable to Government in respect of Kadim Inams (Patilki, Kulkarniki etc) is given in Inam. Admittedly, the Inamdars are themselves the watandar Patils and Kulkarnis. The watan lands as well as the Inam lands are sub-divided between different branches of the Inamdar family, since the year 1845. There appear to be 12 branches in all the Inamdar's family, each being in possession of some Patilki watan lands. The family of plff and deft 2 appears to be in possession of portions of S.Nos.2 measuring A 8 G -28 Rs as 12-8-0 and S.No.3 A-G 7-6 Assmt. 9-12-0 . It appears that in the present R.R. wo S.Nos.2/3 abd 3/3 in possession of plff's family are

Geneology at P.39 file II.

5

P.11 & 13 file II & III & P.19 file XII.

shown to be a - g 8 -25 Assmt. Rs.12-8-0 a- g 6-31 Assmt 9-4-0 respectively. From the geneology at page 39 file II and copy of the Watan register at page 95 of file II it will be seen that Guracharya Rangacharya as the head of the Watandar family is recognised the representative - watandar ~~family~~ Patil. Shrinivasacharya the son of Guracharya Rangacharya is at present the officiating Patil of the village and is appointed for life on behalf of the R.W. i.e. his ~~family~~ father who is 80 years old.

4. On 23-4-1937, one Shrinivasacharya Krishtacharya Baichaval the mortgagee (of S.No.2/3 and 3/3) filed civil suit (L.C.No.240 of 1937) in the Gadag Second Class Sub-Judge's court for recovery of the mortgage-debt against the mortgagor the father of plff and deftz.

Ex.2 file I.

He obtained a decree under which the mortgage amount with interest of Rs.1670 was made payable in instalmenmts the first instalment of Rs.250/- being payable on the 31st July 1938, in default recovery was to be effected by sale of sufficient mortgaged property under section 15 B of the D.A.R.Act. No personal decree was passed and the question whether the watan property mortgaged was or was not saleable in execution was reserved by the terms of the decree. A default having been made by the judgment-debtor (mortgagor) Mr.Baichaval the decree-holder filed L.D.No.606 of 1938 of Gadag court for recovery of the mortgage debt on 27-10-1938. Execution proceedings were transferred by the court to the Collector of Dharwar on 30th April 1939, the properties mortgaged were proclaimed for sale. (Ex.14 file I).

4. As far ~~as~~ back as 1912, a potgi Patrika was prepared under the orders of Government in G.R.R.D.No. 371 of 15-1-1910 calculating the amount of potgi payable from Government treasury to the Patils and kulkarnis of surveyed Inam villages on the basis of receipt of Chavathai and Nazarana amount. On 9-4-1913 the Collector of Dharwar ordered that Rs.20-8-0 (Rs.8/- for Patil and Rs.12-8-0 for kulkarni) should be paid (from Government treasury). There are five Government lands meaning a- g 60 - 38

(R.25-27 file II).

Assmt 74 Rs. in the village, and on this basis Rs.8/- are made payable from Government treasury. P.17 file II.

5. On 14-7-1935 Shrinivas Guracharya the Officiating Police and Revenue Patil of Kurvinkop applied to the Collector praying that provision should be made for his remuneration by recovering the same from his bhauband watandars who are in possession of the Patilki watan lands, observing that he was receiving only Rs.8/- from the treasury as his Potgi in respect of recovery of Government dues including local fund) that the Patilki lands were in possession of the sharers in the patilki family, that they paid nothing and that the liability of Potgi should be - fixed on those lands. In his statement dated 11-8-1936 and recorded before the Mamlatdar, Ron, Shrinivas Guracharya the officiating Patil added that although the Patilki watan lands were to the extent of 279 acres 26 gunthas assessed at Rs.332/- in the village of Kurvinkop, his father remained in possession of 15 acres and 34 gunthas assessed at Rs.21-4-0 as a - result of the Partition in the family which first took place in 1848, and in 1902 and 1935 subsequently. His father had four sons including himself and therefore he got to his share only 1 acre 35 gunthas assessed at Rs.2-8-0. This land of his share fetched him only Rs.8 a year and therefore this sum of Rs.8/- plus Rs.8/- received from Government treasury annually was quite insufficient for his maintenance.

P.1 file II.

P.15 to 18 file II.

6. On 17-5-1936 the Mamlatdar, Ron, submitted a report to the Prant III Division, forwarding the application of the officiating Patil reporting the facts of the case and recommending the ~~xxxxxxxxxxxxxxx~~ recovery of Rs.55-5-4 as potgi rateably from all the holders of the Patilki lands, and that this amount may be assigned as remuneration for the Patil. The Mamlatdar thought that the village was unsurveyed and unsettled and that therefore the Patilki watan lands were assigned lands. (The report of the Mamlatdar, Ron, dated 3-6-1938 to the Prant III Division at page 7 of file III, where the Mamlatdar in his report para 4 says that the village of Kurvinkop is a surveyed village and the holders pay local fund cess. This is supported by the Prant III Division in his report to the Collector dated

P.33-35 file II.

7

30-6-1938 at page 9 file III.

Reverse of P.36 file II.

7. On 22-5-1936 the Assistant Collector III returned the correspondance to the Mamlatdar who was requested to submit the proposals for restoration of the Patilki watan lands which in the opinion of the Assistant Collector, had been alienated to persons other than the officiator to whom they were required to be restored.

P.45 file Do.

8. On 13-8-1936 during the course of inquiry by the Mamlatdar, the bhaubands of the officiating Patil who were in possession of the Patilki lands stated before the Mamlatdar that they were not willing to contribute towards the remuneration of the officiator nor were they liable to restore the lands to him.

P.71 & 73 & reverse file II.

9. Subsequently however, on 30-12-1936,7 out of 12 watandar bhaubands of the officiator stated in writing before the Mamlatdar that they were willing to compromise and pay Rs.60/- annually to the officiator. The statement of these seven sharers in the patilki watan was got recorded before the Mamlatdar that day showing that they were willing for a compromise and pay Rs.60/- a year. On the same day the officiator Shrinivasacharya also stated before the Mamlatdar that he was willing to settle the matter amicably and accept Rs.60- a year as potgi, as otherwise there would be disturbance in the peace of the watan family in view of the fact that there were partitions of watan lands in the family since 1848.

P.83 file II.

10. On 25-1-1937 the Mamlatdar submitted his report to the Prant II Division in reply to the latters' No.W.T.N.814 of 22-5-1936 (C.S.F.Para 7 above) stating that the officiator Shrinivasacharya had got the matter amicably settled with the other members of the Patilki family by accepting a payment of Rs.60/- a year from them in proportion to the Patilki lands in their possession. The Mamlatdar recommended therefore that Rs.60/- a year may be recovered from the other members of the watan family. He also obsered that the alienation was

before 1848 and that the lands could be resumed and restored. A statement showing the amount of potgi to be recovered from each sharers in the Patilki watan was also submitted. P.77-81 file Do.

11. On 8-2-1937 the Assistant Collector ordered as follows:- "The proposed contributions towards the potgi of Patil from the respective sharers as shown in the accompanying statement (as amicably settled by them) should be recovered and paid to the officiating Patil annually as proposed by the Mamlatdar". Reverse of P.83 file II.

12. On 12-2-1937, the Mamlatdar accordingly ordered the village officers to recover the amount and pay to the officiating Patil and obtain receipt. On 4-3-1938 the Mamlatdar ordered an entry to be made in the P.K.W. (i.e Pattakhata Wahi)

13. On 24-2-1937 the officiating Patil submitted an application to the Mamlatdar stating that the recovery of contribution amount of Rs.60/- from various sharers was difficult and suggested that it should be recovered at the time of the land revenue recovery through Government agency, as if it were payable as judee in respect of watan lands and credited to Government treasury and then paid to him directly from the treasury. P.85-87 file Do.

On 25-7-1937 and on 1-12-1937 the officiator repeated his complaint to the Mamlatdar,Ron, regarding the non-recovery of Rs.60/-. P.107 and 129 file Do.

14. On 30-11-1937 Raghavendracharya Rangacharya and Jayaramacharya Rangacharya sharers in the Patilki watan, applied to the Collector objecting to the payment of the Potgi and saying that the Patilki lands were not assigned and were not fully assessed and that only Land tax was recovered. P.131 file Do
P.133 " "

15. Meanwhile on 6-12-1937 the plff's father Raghavendracharya obviously, in order to avoid execution of the decree in L.C.Suit No.240/1937 of Gadag court obtained by S.K.Baichaval who was proceeding against the 2 S.Nos. in possession of plff's father applied to the

91

P.I file III.

Collector, Dharwar, for obtaining a certificate under section 10 of the Bombay Hereditory Offices Act III of 1874.

16. On 12-12-1937 the Collector forwarded the above mentioned application for certificate to the Assistant Collector to report on the advisibility of granting a certificate and as to whether the Patilki lands were assigned for remuneration of the officiator. On 5-1-1938 the Assistant Collector forwarded the papers to the Mamlatdar, Ron, for report.

Reverse of P.1 of file III.

17. On 3-6-1938 the Mamlatdar submitted a report to the Assistant Collector to the effect that the Inam village of Kurvinkop is a surveyed Inam village and local fund is levied by Government. The note at P.87 of the revenue account manual showed that the Kadim Inam lands of the Patil in such villages are not assigned in the Collector's records i.e. Pali register. The Mamlatdar referred to Government rules at page 54 of Mr.Phadnis's Watan Act of ~~1828~~ 1928. This land (R.S.No.2 of Kurvinkop) having not been registered in the Pali register as assigned, the presumption was that it was not assigned. The Mamlatdar ~~that~~ added that under section 23 of the Watan Act, it is incumbent on the Collector to fix the emoluments of the officiator, and to do this, lands have to be assigned. Hak inquiry papers prepared in 1874 showed that no lands have been assigned for the remuneration of the officiator. The Mamlatdar stated that section 73 of the Watan Act emphasised that the order of assignment should be in the hand-writing of the inquiry officer and that there was no such order. The Mamlatdar added that the father of the plff was not the officiator and was not entitled to the privileges under section 10 and 13 of the Watan Act.

18. On 30th June 1938 the Asst Collector forwarded the application for certificate under section 10

of the Watan Act, made by the plff's father (para 15 of C.S.F. above) and the above mentioned Mamlatdar's report to the Collector of Dharwar ~~in~~ observing as follows. There is no note in Col.25 of Hak register to show that the land S.Nos.2 and 3 of Kurvinkop are assigned lands. The village is surveyed and the holders are paying local fund cess. Hence the lands cannot be held to be assigned under section of the Watan Act." The Assistant Collector referred to note at page 87 below paragraph 8 of the Land Revenue Accounts Manual. He added that the applicant was not a representative Watandar Patil and that his elder brother Guracharya Rangachraya was a S.R.W. Under the circumstances the Assistant Collector was not inclined to recommend the grant of a certificate to the plff's father.

19. On 26-2-1938 the statement of the Plff's father was recorded before the Mamlatdar Ron. He stated that the lands were assigned and prayed for certificate under S.10 of the Watan Act. P.23 file III.

20. On 21st September 1938 the Collector called for further report of the Assistant Collector whose attention was invited to para 3 of section 23 of the Watan Act. P.57 file Do.

21. On 30-1-1939 the Assistant Collector submitted a report to the Collector to the effect that the lands were not assigned but that in view of the fact that the Watan lands were passing by virtue of a decree into the possession of a stranger to the watan he recommended the issue of a certificate under section 10 of the Watan Act. P.69 file Do.

22. On 21-4-1939 the Collector held that the land S.No.2 to be assigned and issued a certificate under section 10 of the Watan Act and forwarded it to Gadag II Class sub-Judge's court for the release of the attachment levied on S.Nos.2 and 3 of Kurvinkop in L.D.No.606 of 1938 of Gadag court in execution of a decree obtained by Mr.Baichaval in L.C.Suit No.240 of 1937.

23. On 24-7-1939 the decree-holder Mr.Baichaval filed a petition of appeal to the Commissioner S.D. from the above mentioned order of the Collector granting the certificate. And on the 23rd February 1940, the Commissioner S.D. in his

(C.S.7 para 11 above)

P. Loose papers.

No.W.T.N.A.789, cancelled the order of the Collector holding that the lands are not assigned and that the order of the Assistant Collector dated 8-2-1937 did not amount to an assignment and that the certificate granted was incorrectly framed. The Commissioner, however, observed that the alienation in this case would be a parai and it would be legal to grant a certificate, but the Government orders (G.R.R.D.No.2917 of 28-4-1891 page 92 Part II) in Phadnis's Watan Act V Edition, prohibited the issue of a certificate in such cases.

25. However On 24-4-1941 plff paid Rs.257-11-0 in respect of L.D.No.606/38 of Gadag court. On 4-11-1941 part of S.No. in question i.e. A- G 2 -29 out of the total A G 8-29 was proclaimed for sale for recovery of Rs.757-4-0 in L.D.No.606/1938 of Gadag court.

26. On 19-7-1941 the Collector ordered that the amount of Rs.60/- deemed to be fixed as rent under section 8 of the Watan Act, should be recovered under section 81 of the Watan Act.

24 26. On 26th May 1940 and 3rd September 1940 plff's father made a further representation by a petition to the Government of Bombay on 7-11-1940. Government in their letter No.4028-F/39 declined to interfere.

27. Meanwhile the father of plff died some time prior to 17-9-1941. On 10th November 1941 plff gave notice of suit under section 80 C.P.C. to the Collector, intending to file a suit against the Secretary of State for India in Council. On 22nd November 1941 the Collector accepted this notice.

P.77 file I

28. Subsequently on the 20th February 1942 the plff filed the present suit against deft 1.

29. On 20th March 1942, the plff gave a second notice of suit under section 80 C.P.C.. It may be observed in this notice that the plff stated that he had already filed L.C. special suit No.63 of 1942 against the Secretary of State and others and that he would add the Provincial Government as a party to the said suit on the expiary of two months after the date of the second notice. A copy of the plaint already filed in L.C.Suit No.63 of 1942 was kept along with

with the second notice. The copy of the plaint shows that the "Provincial Government" has been substituted for the Secretary of State for India in Council as deft No.1. This second notice was received on the 20th March 1942 in the Collector's office.

30. The plff prays in the present suit L.C.Suit No.63 of 1942 of Dharwar F.C.Sub-Judge's court for reliefs as stated in para 1 of C.S.F. above. So far as the Provincial Government is concerned, the suit should be deemed to have been filed on 29-6-1942 i.e. the date in which the Provincial Government was added in place of the Secretary of State.

31. It may be noted that the summons served upon the Government Pleader on 7-7-1942 shows that the deft is described as the Secretary of State for India in council.

GROUNDS OF DEFENCE.

1. Notice. It may be urged that the suit is not maintainable for want of proper notice. The suit is deemed to be filed against the Government of Bombay, on the date on which plff adds the Province of Bombay as deft 1 in place of Secretary of State for India in Council. On the first notice of suit dated 10th November 1941 will not avail plff, as the suit is against the Province of Bombay and as it is addressed to the ~~Province of Bombay~~ Collector. The plff while giving the second notice of suit dated 20th March 1942, attached a copy of plaint in L.C.Suit No.63 of 1942 already filed by him. In para 12 of plaint the notice of suit referred to is the one dated 10-11-1941. It is clear therefore, that there is no proper averment in the plaint as required by Sec.80 C.P.C. The suit is, therefore, bad (Please vide ~~xx~~ Balasaheb Ghorpade Vs. The Government of Bombay) F.~~A~~.No.308/1939 H.C.)

2. Jurisdiction:- It may be urged that the court has no jurisdiction to interfere with the order made by the Commissioner in appeal and Government in revision refusing to grant the certificate under section 10 of the Watan Act.

13

The action of the Collector under section 10 of the Watan Act is discretionary. Though he exercises a judicial function under the said section and though his discretion is subject to the supervision by the High Court, his discretion will not be interfered with unless there is violent misuse of authority, obvious bad faith, reckless disregard or wanton perversion of law. (28 Bom.L.R.P.456 Govind Vs.Balakrishna). In this case the Commissioner and Government find that the properties in suit are not - assigned patilki watan lands and that the order dated 8-2-1937 made by the Assistant Collector does not amount to an assignment. It is clear, therefore, that the order of the Commissioner upheld by Government is justified and legal and bona-fide. The High Court in such cases will not interfere under the powers of supervision vested in it under the letters patent. The case in 28 Bom.L.R. 456 shows that the High Court will not interfere with the Collector's action even under section 115 of the C.P.C. Much less therefore can the subordinate courts interfere in the Collector's action. The issuing or non-issuing of certificate is only a proceeding in the nature of a - notification provided by the Act and does not amount to an application to the civil court (17 Bom.I.L.R.P.362). It would, therefore, follow that the civil court cannot interfere with the jurisdiction of the Commissioner and Government who are the appellate and revisional authorities over the Collector respectively under section 77 and 78 of the Watan Act.

3. Limitation. It may be contended that the suit is barred under Article 14 of the Limitation Act. The order of Government is dated 7-11-1940. On 29/6/1942 the plff obtained an amendment of the plaint by substituting the Provincial Government as deft 1 in place of the Secretary of State for India in Council. Therefore the suit against the Provincial Government should be deemed to have been filed on 29/6/1942. Even excluding the period of two months of notice, therefore, the suit is filed more than a year after the order of Government dated 7-11-1940.

4. Estoppel. In paras 3 and 5 of the plaint plff contends that the deft 2 (Govt) is estopped from denying that the lands in suit (R.S.Nos.2 and 3) are assigned, because, the orders of the Assistant Collector dated 8-2-1937 are still being carried. It is true that steps are being taken up to recover Rs.60/- agreed to be paid by wetandar bhaubands by way of contribution. But this does not mean that the lands themselves are assigned legally. What is enforced is only the agreement made by the sharers to pay Rs.60/- yearly under section 81 of the Watan Act. Besides there can be no estoppel on a question of law. The question whether the lands in dispute are assigned or not on the facts framed would be a question of law.

5. Merits. The question in this case, so far as Government is concerned is whether the lands R.S.Nos.2 and 3 of the Inam village Kurvinkop are assigned Patilki watan lands or not. The plff contends that the order of the Assistant Collector dated 8-2-1937 ordering the recovery of Rs.60/- as potgi from the bhaubands of plff in possession of patilki watan lands amounts to an assignment under section 23 of the Watan Act. There is no note in col.25 of Hak register to show that the lands in question are assigned property nor are the lands entered in the Pali register or Petha Khata-Wahi to show that the said lands are assigned. The village of Kurvinkop is a surveyed Inam village and local fund cess is paid by the holders. At page 87 of Mr.Anderson's Revenue Accounts manual, it is stated "In unserveyed Inam villages, if Kadim lands of Patilki and kulkarniki watan are still held free of local fund cess, they are assigned for ~~local fund cess~~ remuneration. All other lands under this head are not so assigned. Local fund is however now ordered to be levied in respect of all Kadim Inam lands under G.R.R.D.No.5225 of 15th January 1925. Besides section 23 of the Watan Act III of 1861 requires that there should be a specific order made by the Collector assigning the watan lands as liable for the remuneration of the officiator. The Act XI of 1843 also requires a specific

15

assignment. If any new assignment is to be made, it appears that the Collector has to obtain sanction of Government under section 23(4) of the Watan Act 1874. E Even according to plff's case here, obviously there was no assignment of any watan property prior to the order dated 8-2-1937 made by the Assistant Collector. But this order, as a matter of fact, does not say the terms that the Patilki lands in question are assigned. The order was only the result of a compromise arrived between the officiator and the other sharers and holders of patilki watan lands that the latter should contribute Rs.60/- towards the payment of the officiator. But this order has been held to be not an assignment in appeal by the Commissioner. It may be contended, therefore, that there is no evidence in this case to show that the lands of patilki watan of the Inam ~~if~~ village are assigned lands. (please see 43 Bom.L.R.P.) The mere fact that the lands are entered in the R of R or watan register as patilki service lands do not make them legally assigned.

For all these reasons it should be urged that the plff's suit should be dismissed with costs.

17

Special Suit No of

In the Court of the First Class Sub-Judge,
A
at Dharwar.

Plaintiff :- Rangachary Raghavendrachary Panchmukhi, age about 36, caste Brahmin, Occupation Agriculture and service, Residence Dharwar.

Versus.

Defendant :-
1) The Secretary of State for India in Council
2) Anantachary Raghavendrachary Panchamukhi age about 22, Caste Brahmin, Occupation private service, residence Bangalore.
3) Ramachary Shriniwasacharya Baichawal, age about 40, caste Brahmin, occupation Pleader Residence Bijapur.
4) Kristacharya Shriniwasacharya Baichawal, age about 38, Caste Brahmin, Occupation nil, Residence Gadag.
5) Madhvacharya Sriniwasachary Baichawal, age about 36, caste Brahmin Occupation nil Residence Gadag.
6) Shriniwasacharay Guracharya Pachamukhi age about 45, Caste Brahmin, Occupation Agriculture, Residence Holealur, Taluk Ron.
7) Kristacharya Gunracharya Panchmukhi age about 40, Caste Brahmin, Occupation Service Residence Hyderabad (Deccan)
8) Anantacharya Vasudevacharya Pachamukhi age about 25, Caste Brahmin, Occupation nil Residence Hyderabad (Deccan)
9) Swamiracharya Guracharya Pachamukhi age about 36, Occupation Service, Caste Brahmin Residence Dharwar Mensinkai Galli

4

14

10) Hanamantachary Rangacharya Panchamukhi, age 65 Caste Brahmin, Ocupation Agriculture, Residence Dharwar Potnis Galli Dharwar.

11) Jayaramacharya Rangacharya Panchamukhi, age about6 Caste Brahmin, Occupation Agriculture, Residence Kuruvinkop Taluk Ron.

The plaintiff above named begs to submit most respectfully as under :-

(1) Plaintiff and defendtant No.2 are the sons of one Raghavendrachary Rangacharya Panchamukhi. There has been no partition in the family uptil now. Raghavendrachary died on 14-6-1941. This joint family owns and possesses several properties including the properties described below in the village of Kuruvinkop Taluk Ron.

R.S.No.	Acrege	Assessment.
2/3	8-25	Rs12-6-0.
3/3	6-31	Rs 9-4-0.

both of Kuruvinkop Taluk Ron.

(2) The properties described in para 1 of the plaint are ancestral properties of the family in which plaintiff and defendant No 2have acquited an interest by birth. They form part of a Patilki Watan and have been recorded as such in in the record of rights. These lands are assigned as remuneration of the Officiator for the time being, and therefore inalienable without the sanction of Government and are not liable to process of any Civil Court under the provisions of the Bombay Heriditory Offices Act 1874.

(3) On the recommendation of the Amlatdar Taluk Ron, and with the consent of the respective sharers, The Assistant Collector III Division Dharwar, has by an order dated 8-2-1937 in his No.W.T.N 814 directed that contributions should be recovered from the owners of the above mentioned Revision Survey Nos. 2and 3 of Kuruvinkop towards the remunaration of the Officiator for the time being. This order of the Assistant Collector necessarily implies a judicial and executive recognition of the fact that the two lands

are assigned for remuneration of the Officiator for the time being, It amounts to a judgment by a competent authority and is binding on all the defendants. None of the defendants are entitled, to repudiate the order. In particular Defendant No 1 has absolutely and effectively estopped himself, from denying the fact that the two lands are assigned for the remuneration of the Officiator for the time being. Defendant No.1 is even now enforcing the order through his sub-ordinates.

4) Raghavendrachary the father of the plaintiff and defendant No.2 without the sanction of Government, and without any legal necessity and without the consent of the sons) took a loan of Rs.1000/- on 17-1-1925 on a simple mottgage of his portion of R.S.No.2 referred to above from the father of defendants 3,4 and 5. (There were no antecedent debtsat the time of the mortgage transaction. The joint family has not received any benefit out of the loan amount) The mortgage debt and the alienation are void and ineffective against, and not binding on, the interests of the plaintiff and defendant No 2 in the properties mortgaged. The mortgagee has obtained an instalment decree under S.15 B of the D.A.R.Act for recovery of Rs.1670/- costs and future interest on Rs.1000/- at 6 per cent per annum in L.C. suit No.240 of 1937 of the court of the Secend Class Sub-judge, Gadag. The Decree was against the mortgagor and his two sons. There was no personal decree against any of the defendants.(In law and in fact the decree was -- against the undivided interest of the mortgagor in the mortgaged property with the sons as nominal parties.) In any event there could not be and there was in fact no decree against the undivided interest of the sons in the mortgaged property. The sons were not parties to the mortgage. The question as to whether the properties were liable to satisfy the debt, under the provisions of the Bombay Hereditary Offices Act was expressly reserved for determination in execution proceedings. Under these circumstances the rights and interests of the plaintiff and defendant No.2 in the mortgaged properties are not liable to be sold, and are not liable for any process of the civil court.

5) The decree holder applied for execution of his decree in Long Cause Darkhast No.606 of 1938, for recovery of his decretal amount by sale of the mortgage property. The father of the plaintiff then applied to the collector of Dharwar, fo the issue of a certificate under the provisions of the Bombay Heriditary Offices Act,1874, as the lands were assigned for remuneration of the Officiator for the time being and therefore not liable to be alienated without the sanction of Government and therefore were not liable for any process of the Civil Court. The Collector of Dharwar was pleased to grant the necessary certificate by an order in his W.T.N. S/1415 dated 17-4-1939. But the Commissioner Southern Division cancelled the certificate issued by the Collector of Dharwar by order in his No.W.T.N.A.P.789 dated the 23rd of February 1940 The father of the plaintiff then moved the Government of -- Bombay in revision under Section 79 of the Bombay Heriditary Offices Act, but the Assistant Secretary to the Goverment of Bombay, Revenue Department, informed him by his No 4028/f/39 dated 7-11-1940 that the Government saw no reason to interefere with the Commissioner's order. The effect of the order of the Commissioner and the Government is to repudiate the order of the Assistant Collector dated 8-2-1937 the benefit of which defendant No 1 is still enjoying. There can be no approbation and reprobation of the fact that the lands are assigned for remuneration of the Officiator for the time bein The order of the Commissioner Southern Division and of the Government in this behalf are not only ultra vires, but are opposed to law, equity and justice.

6) The mortgagee, the father of the defts.3,4 and 5 died in or about the year 1940. The mortgagor the father of the plaintiff and defendant No 2 died on 14-6-1941. The execution proceedings in L.D.No. of 1938 of the court of the Sub-ordinate Judge II Class Gadag, are liable to be transferred to the Collector.

7) For the reasons stated in the foregoing paras, Defendants 3,4 and 5 are not entitled to bring the to sale

and the Collector is not competent to sell the mortgaged property. Under these circumstances the rights and interests of the plaintiff and defendant No.2 in R.S.Nos.2 and 3 of Kuruvinkop, Taluk Ron have been prejudiced and are likely to be further prejudiced by the illegal and unauthorised acts, so far committed and contemplated to be committed by the defendants 1,3,4 and5. It was therefore necessary to file this suit for getting proper reliefs.

8) The cause of action for the suit arose on 25-2-1940, the date of the order of the Commissioner cancelling the certificate issued by the Collector of Dharwar.

9) The valuation of the suit is as under:-

a) For Court fees Rs.200/-.

For a declaration that the mortgage debt is not binding on the plaintiff and defendant 2 and that the two lands R S.Nos.2 and 3of Kuruvinkop Taluk Ron, are lands assigned for remuneration of the officiator for the time being and therefore not liable to be sold in execution of the decree in I.C.S.No 240 of 1937 of the Second Class Sub-ordinate Judge, Gadag and that therefore the orders of the Commissioner Southern Division cancelling the certificate issued by the Collector and of the Government in that behalf are ultra vires and inoperative and ineffective .

b) For Jurisdiction and pleaders fees the valuation is Rs.3000/- the value of the two lands.

10) Defendant No 2 ought to have joined the plaintiff in this suit but he declined to do so. He is therefore made a defendant . Defendant Nos. 3 to are persons interested in the relief claimed by the plaintiff. Defendants 6 to 11 are the various shareers in Revicions Survey Nos.2and 3 of Kuruvinkop in respect of which plaintiff claims relief.

11) The court of the First Class Subordinate Judge, Dharwar has jurisdiction to try this suit within the limits of whose jurisdiction the properties in respect of which plaintiff claims relief are situate.

12) Notice of this under Section 80 of the Code of Civil Procedure has been served on defendant No.1 by registered post on 11/11/1941.

27 2 35

13) Plaintiff therefore prays

(a) For a declaration that the mortgage debt is not binding on plaintiff and defendant 2 and that the two lands revision survey numbers 2 and 3 of Kuruvinkop Taluk Ron are lands assigned for remuneration of the Officiator for the time being and therefore not liable to be sold in execution of the decree in L.C.S.No.240 of 1937 of the Second Class Subordinate Judge Gadag and that the orders of the Commissioner Southern Division Cancelling the Certificate issued by the Collector of Dharwar and of the Government in that behalfare ultra vires, in-operativ and ineffective and are opposed to law, Justice and equity.

(b) For any other relief the Court may find the plff. is entitled to under the circumstances of the case.

(c) For permission to amend the plaint if necessary.

(d) For recovery of costs of this suit from such of the defendants as are found liable.

I, Rangacharya Raghavendrachary Panchamukhi do hereby state on solem affirmation that what is stated in the above paras is true to my knowledge, information received and believed to be correct.

20th March 42

Letter.

29

Subject: Dharwar Civil Suit .63 of 19[illegible].

No.L.A.M.386 Dharwar, 6th September 19[illegible].

To

The Commissioner,
Southern Division, Belgaum.

I have the honour to submit herewith x letter No.[illegible]64 dated 2/9/194[illegible] from the District Government Pleader, Dharwar with the accompaniments and to request that Government may kindly be moved to sanction the defence of the suit.

Accompaniments
5. Files

Collector of Dharwar.

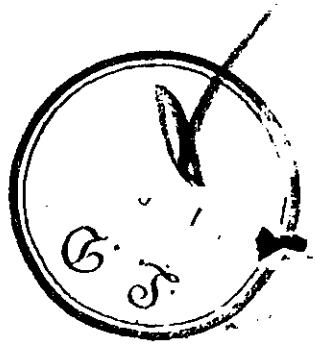
P.T.O.

No. L.D.F. 267.
Office of the Commissioner, [illegible].
Belgaum, 18th September 1918.

Submitted with acknowledgments.

Commissioner S.D.

Remembrancer of Legal Affairs.



10058
A 21-9-18

Submitted.

This relates to Dharwar C.S.No.63/42. The suit lands are Patilki watan lands but the suit S.Nos. are not assigned for the remuneration of the officiator under S.23 of the Watan Act. The suit lands are mortgaged to the father of defendants 3 to 5 by the father of the plaintiff. It is contended by the plaintiff that they are not liable to be sold in execution of the mortgage decree. The father of the plff. obtained a certificate from the Collector under section 10 of the Watan Act on 21-4-39 but the Commissioner cancelled the grant of the certificate on 23-2-40. Hence the suit. The suit is defensible on technical and other grounds. Sanction be accorded to the defence of the suit on lines of the appended brief. The written statement is to be filed on 29-1-43.

27/1

RLA Asst

Secy RD 29.1.43

No 749 Dated 29-1-43

849 ✓
A30 1/43

In the Court of the First Class Sub-Judge,

Dharwar.

Civil Suit No. 63 of 1942.

Rangacharya Raghavendracharya Panchamukhi ... Plaintiff;

versus

(1) The Provincial Government of Bombay,
(2) Antacharya Raghavendracharya Panchamukhi, ...Defendants.
(3) Ramcharya Shrinivascharya Baichawal and 8 others.

The written statement of the above named 1st defendant is as follows :-

1. The Plaintiff's claim in suit is denied.

2. The suit is ~~barred~~ bad for want of proper notice under section 80 of Civil Procedure Code. There is no averment of notice dated 20-3-42 to the Provincial Government in the plaint. The suit is liable to be dismissed asagainst Government

3. The suit is barred under article 14 of Schedule I to the Limitation Act. The prayers sought by the plaintiff are inconsistent with and involve the setting aside of the order of the Commissioner dated 23-2-40.

4. The order of the Commissioner dated 23-2-40 cancelling the grant of a certificate under section 10 of the Watan Act is intra vires and lawful. The plaintiff's allegations to the contrary are denied. The Court has no jurisdiction to interfere with the discretion of the Collector or the Commissioner in granting or refusing the certificate under section 10 of the Watan Act.

5. The plaintiff's allegations in paras 1 to 3 of the plaint are denied. His allegations in para 4 to 7 of the

plaint are not admitted.

6. It is denied that the suit lands are assigned for remuneration of the officiator. There is no order of assignment of the suit land under section 23 of the Watan Act. It is denied that the order of the Asstt.Collector dated 8-2-37 is an order of assignment of the suit land for remuneration of the officiator. The plaintiff's allegation to the contrary in para 3 of the plaint are denied. It is denied that this defendant is estopped from denying that the suit lands are assigned for the remuneration of the officiator. The enforcement of the aforesaid order cannot operate as an estoppel.

7. The Plaintiff is not entitled to any of the prayers sought for and the suit should be dismissed with costs.

District Government Pleader, Dharwar.

I, District Government Pleader, Dharwar, do hereby declare that what is stated in paragraphs 1 to 7 above, is true according to the information received and believed to be true. This verification is made at on 1943.

District Government Pleader, Dharwar.

~~46~~
35

Suits.

Dharwar.

For a declaration that the Commissioner's order cancelling the grant of certificate under section 10 of the Bombay Hereditary Offices Act, 1875, is illegal, etc.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 802-A.

Bombay Castle, 2nd February 1943.

Letter from the Collector of Dharwar, No. L.A.W. 396, dated the 8th September 1942—

In the Court of the First Class Sub-Judge, Dharwar.

Civil Suit No. 63 of 1942.

Rangacharya Raghavendracharya Panchamukhi.. Plaintiff;

versus

(1) The Provincial Government of Bombay; (2) Antacharya Raghavendracharya Panchamukhi; (3) Ramcharya Shreenivascharya Baichawal and 8 others .. .. } Defendants.

Claim—Rs.

Forwarding papers in the suit noted in the margin; and requesting sanction to its defence.

Endorsement by the Commissioner, Southern Division, No. L.S.T. 267, dated the 16th September 1942—Forwarding the above with his concurrence.

Memorandum to the District Government Pleader, Dharwar, No. 802, dated the 2nd February 1943—Forwarding a copy of the brief with its accompaniments in advance.

---

pp. 2–14 of file I.

3. In the meantime on 6th December 1937, the plaintiffs' father Raghavendracharya in order to avoid execution of a decree in Civil Suit No. 240 of 1937 of Gadag Court obtained by S. K. Baichawal who was proceeding against S. Nos. 2/3 and 3/3 situate in the Inam village of Kurvinkop, taluka Ron of Dharwar District, applied to the Collector of Dharwar for a certificate under section 10 of the Bombay Hereditary Offices Act, 1874.

p. 1 of file III.

4. On 3rd June 1938, the Mamlatdar reported that the Inam village of Kurvinkop is a surveyed inam village, that local fund is levied by Government and that the lands are not assigned. On 30th January 1939, the Assistant Collector also reported that though the lands were not assigned, as the watan lands were passing into the hands of a stranger by virtue of the decree passed, a certificate under section 10 may be granted to the plaintiff's father.

p. 7 do.

p. 69 do.

5. On 21st April 1939, the Collector held S. No. 2 as assigned and issued a certificate under section 10 of the Bombay Hereditary Offices Act, 1874, and forwarded it to the Court of the Second Class Sub-Judge, Gadag, for release of attachment levied on S. Nos. 2/3 and 3/3 in execution of a decree obtained by Mr. Baichawal.

p. 41 of file V.

6. On 24th July 1939, the decree-holder Mr. Bhaichawal presented an appeal to the Commissioner, S. D., against the order of the Collector dated 21st April 1939 granting the certificate. The

Suits.

Dharwar.

For a declaration that the Commissioner's order cancelling the grant of certificate under section 10 of the Bombay Hereditary Offices Act, 1875, is illegal, etc.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 802-A.

Bombay Castle, 2nd February 1943.

Letter from the Collector of Dharwar, No. L.A.W. 396, dated the 8th September 1942—

In the Court of the First Class Sub-Judge, Dharwar.

Civil Suit No. 63 of 1942.

Rangacharya Raghavendracharya Panchamukhi.. Plaintiff;

versus

(1) The Provincial Government of Bombay; (2) Antacharya Raghavendracharya Panchamukhi; (3) Ramcharya Shreenivascharya Baichawal and 8 others .. .. } Defendants.

Claim—Rs.

Forwarding papers in the suit noted in the margin; and requesting sanction to its defence.

Endorsement by the Commissioner, Southern Division, No. L.S.T. 267, dated the 16th September 1942—Forwarding the above with his concurrence.

Memorandum to the District Government Pleader, Dharwar, No. 802, dated the 2nd February 1943—Forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION.—The defence of the suit should be sanctioned on the lines of the accompanying brief.

By order of the Governor of Bombay,

Original P.N.M.

P. N. MOOS,
Secretary to Government.

G. R. No. 802-A, L. D., dated the 2nd February 1943.

To

* The Revenue Department,
* The Commissioner, Southern Division,
* The Collector of Dharwar,
The District Government Pleader, Dharwar (with two copies of the brief).

* With a copy of the brief.

No. of 1943.

Copy forwarded for information and guidance to

Submitted after issue.

File.

24/2/43 B.S. 20/4 21/4. B.S. 20/4

57
37

DHARWAR CIVIL SUIT NO. 63 OF 1942.

Chronological Statement of Facts.

Plaint at pp. 19–35 of file V.

This is a suit filed by Rangacharya Raghavendracharya Panchamukhi against the Provincial Government and 10 others for a declaration that the mortgage debt incurred by his father from the father of defendants Nos. 3 to 5 on the security of his Patilki watan lands is not binding on him and defendant No. 2. that the lands being assigned for remuneration of the officiator are not liable to be sold in execution of the mortgage decree and that the order passed by Government cancelling the issue of a certificate under section 10 of the Bombay Hereditary Offices Act granted by the Collector is *ultra vires* and illegal, etc.

p. 1 of file II.

2. On 14th July 1935, Shrinivascharya Guracharya, the officiating Police and Revenue Patil of Kurvinkop, applied to the Collector praying that provision should be made for his remuneration by recovering the same from his *bhauband* watandars in possession of the Patilki watan lands. On 30th December 1936, seven out of twelve *bhaubands* agreed to compromise the dispute amicably by contributing Rs. 60 annually to the officiator as *potgi* on the condition that the possession of Patilki lands by them will not be disturbed. Accordingly on 8th February 1937, the Assistant Collector ordered that the contributions towards the *potgi* as agreed should be recovered and paid to the officiating Patil.

pp. 71 & 73 do.

p. 83 do.

pp. 2–14 of file I.

3. In the meantime on 6th December 1937, the plaintiffs' father Raghavendracharya in order to avoid execution of a decree in Civil Suit No. 240 of 1937 of Gadag Court obtained by S. K. Baichawal who was proceeding against S. Nos. 2/3 and 3/3 situate in the Inam village of Kurvinkop, taluka Ron of Dharwar District, applied to the Collector of Dharwar for a certificate under section 10 of the Bombay Hereditary Offices Act, 1874.

p. 1 of file III.

4. On 3rd June 1938, the Mamlatdar reported that the Inam village of Kurvinkop is a surveyed inam village, that local fund is levied by Government and that the lands are not assigned. On 30th January 1939, the Assistant Collector also reported that though the lands were not assigned, as the watan lands were passing into the hands of a stranger by virtue of the decree passed, a certificate under section 10 may be granted to the plaintiff's father.

p. 7 do.

p. 69 do.

p. 41 of file V.

5. On 21st April 1939, the Collector held S. No. 2 as assigned and issued a certificate under section 10 of the Bombay Hereditary Offices Act, 1874, and forwarded it to the Court of the Second Class Sub-Judge, Gadag, for release of attachment levied on S. Nos. 2/3 and 3/3 in execution of a decree obtained by Mr. Baichawal.

6. On 24th July 1939, the decree-holder Mr. Bhaichawal presented an appeal to the Commissioner, S. D., against the order of the Collector dated 21st April 1939 granting the certificate. The

Commissioner on 23rd February 1940 ordered that the certificate granted by the Collector should be cancelled. He further held that the lands were not assigned and that the Assistant Collector's order dated 8th February 1937 did not amount to an assignment. p. 145 of file II, copy of the order at p. 43 of file V.

7. On 26th May 1940 and 3rd September 1940, plaintiff's father filed an appeal to Government who declined to interfere in the matter. p. 45 of file V.

8. On 10th November 1941, the plaintiff gave a notice of suit under section 80, Civil Procedure Code, to the Collector and on 20th February 1942, he filed the present suit against the Secretary of State for India in Council in the Court of the First Class Sub-Judge, Dharwar, praying for a declaration— p. 1 of file IV. p. 3 do.

(*a*) that the mortgage debt incurred by his father is not binding on him ;

(*b*) that the two survey numbers are lands assigned for remuneration of the officiator for the time being and therefore not liable to be sold in execution of the decree ;

(*c*) that the orders of the Commissioner, S. D., cancelling the certificate issued by the Collector under section 10 of the Bombay Hereditary Offices Act, 1874, is illegal, *ultra vires*, etc.;

(*d*) for costs and any other relief.

9. On 20th March 1942, the plaintiff gave a second notice of suit stating that in the suit already filed the Provincial Government of Bombay would be substituted in place of the Secretary of State for India in Council as a party defendant. p. 27 of file V.

Grounds of Defence.

Notice.—The plaintiff gave notice to suit against Secretary of State for India in Council on 10th November 1941. Then the present suit was filed on 20th February 1942 making Secretary of State for India in Council as defendant No. 1. Then on 20th March 1942 the plaintiff gave notice, with the copy of the plaint of the suit already filed, saying that in this suit Provincial Government of Bombay will be substituted as defendant No. 1. The amendment was made on 29th June 1942. But the averment in plaint, paragraph 12, remains the same and it refers to the notice dated 10th November 1941. There is no proper averment of notice under section 80, Civil Procedure Code, to the Provincial Government in the plaint. The suit is liable to be dismissed (Balasaheb Ghorpade *v.* Government of Bombay, F. A. No. 308/39 of the Bom. H. C.).

2. *Limitation.*—The suit is filed on 20th February 1942 but it must be deemed to be filed against the Province of Bombay on 29th June 1942 when the amendment was made. The order of the Collector dated 21st April 1939 granting the certificate under section 10 of the Watan Act was set aside by the Commissioner on 23rd February 1940. The Government finally declined to interfere on 7th November 1940. The prayers sought by the plaintiff are

inconsistent
cancelling the
of the Wata
article 14 of S

3. *Merits.*
the material
lands, R. S. N
lands or not.
register to sh
Patilki watan
in the Pali r
The village of
and local fund
in such cases
lands (*see* Mr.
at page 87).
order of the
1937 amounts
the Watan
contribution
respective sh
ordered to be
of file II).
there must be
ing the land
There is no s
If a fresh as
the Governm
ment of the
Collector. T
The mere fac
Record of Rig
lands cannot
emolument

4. Grantin
10 of the Wa
Collector.
Balkrishna N
ships followe
v. Bhaskar M
264 and said
certificate un
Offices Act (
function, and
High Court,
with his disc
authority, ob
or wanton p
the present s
be pleaded.
that the land
Watan Act
Commissione
and that the
not assign t
officiator. T
the order was
of alienation
view of Gove
April 1891 (a
it was held th
the certificat

inconsistent with the order of the Commissioner cancelling the grant of the certificate under section 10 of the Watan Act. The suit is barred under article 14 of Schedule I to the Limitation Act.

3. *Merits.*—So far as the Government is concerned, the material question in the suit is whether the suit lands, R. S. Nos. 2 and 3 are assigned Patilki watan lands or not. There is no note in column 25 of Hak register to show that the suit lands are assigned Patilki watan lands nor are the suit lands entered in the Pali register or Petha Khatawali as such. The village of Kurvinkop is a surveyed inam village and local fund cess is paid by the holders. The lands in such cases cannot be held to be assigned watan lands (*see* Mr. Anderson's Revenue Accounts Manual at page 87). The plaintiff's contention is that the order of the Assistant Collector dated 8th February 1937 amounts to an assignment under section 23 of the Watan Act. But this is not so. Only the contribution towards the *potgi* of the Patil from the respective sharers as amicably settled by them was ordered to be paid to the officiating Patil (*see* pp. 83-84 of file II). Under section 23 of the Watan Act, there must be a specific order of the Collector assigning the land for the emolument of the officiator. There is no such order of the Collector in this case. If a fresh assignment has to be made sanction of the Government is necessary. There was no assignment of the land before the order of the Assistant Collector. This is in effect conceded by the plaintiff. The mere fact that the lands are entered in the Record of Rights or watan register as Patilki service lands cannot make them legally assigned for the emolument of the officiator.

4. Granting or refusing a certificate under section 10 of the Watan Act is within the discretion of the Collector. In Govind Mahipat Deshpande *v.* Balkrishna Narayan, 28 Bom.L.R. 456, their Lordships followed the view held in the Collector of Thana *v.* Bhaskar Mahadev Sheth, (1884) I.L.R. 8 Bom. 264 and said that "the Collector when granting a certificate under section 10 of the Bombay Hereditary Offices Act (No. III of 1874), exercises a judicial function, and is subject to the supervision of the High Court, but the High Court will not interfere with his discretion unless there is violent misuse of authority, obvious bad faith, or reckless disregard or wanton perversion of the law on his part." In the present suit no such allegation is made or can be pleaded. The Collector in his order believed that the lands were assigned under section 23 of the Watan Act and hence were inalienable. The Commissioner held that the lands were not assigned and that the Assistant Collector's order also does not assign the lands for the remuneration of the officiator. The Commissioner therefore said that the order was not correctly framed. Even the point of alienation to a stranger was considered but in view of Government Resolution No. 2917, dated 28th April 1891 (at p. 92, Pt. II of Phadnis's Watan Act) it was held that the Collector should not have granted the certificate. It should be urged that the order

of the Commissioner is *intra vires* and lawful and that the Court has no jurisdiction to interfere with that order.

5. In view of the order of the Assistant Collector dated 8th February 1937 and the enforcing of the same by the Government, the plaintiff urges that the Government is estopped from denying that the suit lands are not assigned for remuneration of the officiator. What is enforced is only the agreement made by the sharers to pay Rs. 60 per year under section 81 of the Watan Act. There is no legal order of assignment under section 23 of the Watan Act. Besides there can be no estoppel on a point of law.

6. For all these reasons it should be urged that the suit should be dismissed with costs.

S. Dave 1/43
Vaman Jate
26-4-43

1/-
4

Received on 20-2-1942.

Registered on 20-2-1942.

Decided on ~~10~~ 10-7-1944.

Duration :- 2 years 4 months and 20 days.

Exhibit No. 81

In the Court of the F.C. Sub-Judge, Dharwar,

At Dharwar.

L. C. Civil Suit No. 63 of 1942.

Pleaders.
Mr.Dehai-Kulkarni.

1. Rangacharya Raghavendracharya Panchamukhi, of Dharwar.....Plaintiff.

Against.

Mr.Malapur.

1. The Provincial Government of Bombay.

Ex-Parate.

2. Anantacharya Raghavendracharya Panchamukhi Banglore

Mr.Guttal &
" R. N. Kulkarni,
Ex-parate.

3. Ramacharya Shriniwasacharya

4. Krishtacharya Shriniwasachrya

" 5. Madhavacharya Shriniwasacharya.

" 6. Shriniwasacharya Guracharya.

" 7. ~~Krightachrya~~ Krishtacharya Guracharya.

" 8. Anantacharya Vasudevacharya

" 9. Swamiracharya Guracharya.

" 10. Hanamantacharya Rangacharya

" 11. Jayaramacharya Rangacharya.

Rs. 200/- for Court fees. Rs. 3000/- for Jurisdiction.

The plff sues to obtain a declaration that the mortagage decree obtained by the father of the defts 3 to 5 against the plff. The deft No. 2 and their deceased father in L. C. S. No. 240 of 1937 on the file of the second class Sub-Judge's Court at Gadag was not --

43

binding upon him and the deft No. 2. That R.S. Nos. 2 and 3 of Kurvinkop in Ron taluka were assigned for the remuneration of the offiiating patil of the said village for the time being and as such xnot liable were sold in execution of the decree in L. C. S. No. 240/1937 and that the orders of the Commissioner Southern Division cancelling the certificate issued by the collecter of Dharwar under Section 10 of the Watan Act and of the Government of Bombay in appeal. Therefrom were ultra vires, inoperative and in effective and to (4) recover costs of suit.

The plaintiff alleged in the plaint that the deft No. 2 was his brother and formed a joint and undivided Hindu family. That their father died on 14-6-1941 in union (2) with them, That they owned R. S. Nos. 2/3 and 3/3 of Kurvinkop or ancestral family property, That the said lands are Patiliki Watan Inam Lands and assigned as (3) the remuneration of the officiator for the time being, that -- they were therefore not liable to the process of any Civil Court and inalienable. That on the recommendation of the Mamalatdar, taluka Ron and with the -- consent of the sharer's, The Assistant Collecter IIIDn. Dharwar has by an order dated 8-2-1937 directed that the sharers in S. No. 2 and 3 should contribute towards the remuneration of the officiator for the time being, that the said order was binding upon all the defts including the Ist deft who is the Provincial Government of Bombay. That Raghavendracharya, the father of the plff and the deft No. 2 has passed a simple mortgage bond dated 17-1-1925 for Rs. 1000/- in the name of the father of the defts 3 to 5 comprising the lands described in para one of the plaint without the sanction of the Government and without

any legal necessity. That upon the said mortgage bond, the mortgage has obtained a decree in L. C. S. No. 240 of 1937 on the file of the Gadag Court against the original mortgagee and his two sons i.e. the plff and the deft No. 2. That the decree holder has applied for execution of the decree in L. D. No. 606 of 1938 by sale of the mortgaged property. That the plff's father had applied to the Collector of Dharwar for the grant of a certificate under the watan Act as the lands were assigned for the remuneration of the -- officiater and therefore not liable to be alienated without the sanction of the Government and not liable for any process of the Civil Courts. That the Collector of Dharwar had granted a certificate dated 17-4-1939 but that the Commissioner S. D. cancelled it by order dated the 23rd of February 1940,. That the plff's father then moved the Government of Bombay in revision under Section 79 of the Watan Act but that he received a reply dated 7-11-1940 from the Assistant Secretary to the Government of Bomay, Revenue DEpartment to the effect that the Government saw no reason to interfere with the commissioner's order. That the cause of action for the suit arose on 23-2-1940 when the commissioner S.D., cancelled the certificate issued by the Collector of Dharwar and that therefore the plff has filed the suit to obtain the declaration as above against the defts.

The Secretary of State for India in -- Council was first impleaded as deft No. 1 to the suit. Subsequently the plff got "The Provincial Government of Bombay" substituted in place of the original deft No. 1 by amending the plaint (Vide Ex. 15). The deft No. 1 in its written statement at Ex. 39 contends that the suit was bad for

Want of proper notice under Section 80 of the Civil Procedure Code. That it was barred under Article ~~nf~~ 14 of Schedule I to the Limitation Act. That the Court has no jurisdiction to interfere with the discretion of the Revenue Authorities in granting or refusing the certificate under Section 10 of the Watan Act. That it was not a fact that the suit lands were assigned is the remuneration of the officiator or under Section 23 of the Watan Act That the order of the Assistant Collector, dated 8-2-37 was not an order of assignment of the suit lands for the remuneration of the officiator, That the Plff was not entitled to any of the reliefs sought by him,. That the suit should be dismissed and Government's costs awarded.

The deft No. 3 in his W. statement Ex. 40 contends that the plff and the deft No. 2 were parties to L.C.S. No. 240/-37 on the file of the Gadag Court. That the decree passed therein was binding upon them is resjudicata. That the life interest of the plff and the deft No. 2 in the mortgaged property was liable to be sold in execution of the decree passed in the said suit. That the plff's suit was barred under the -- Revenue Jurisdiction Act and that the order passed by the Assistant Collector with the consent of the sharers regarding the contribution to be made by the suit awards the remuneration of the officiating patil was not binding upon them. In other respects his contentions are the same as there contained in the W. Statement of the deft No. 1.

The other defts are absent and ex-parte. The following issues were framed at Ex. 53 by my predecessors

~~XX~~ I S S U ~~E~~S

1. Whether plff proved that the suit lands are assigned to plff and defts 2, 6 to 11 or their ancestors for remuneration under Section 23 of the Bombay Heriditory

* Offices Act ? (1)

49

2. If so whether the order in terms of Exs, 50 and 51 is valid in law so far as they are concerned and whether it is binding upon them ?

3. Whether the suit is barred by limitation ?

4. Whether the notice given to deft No. 1 is proper and valid in law ?

5. Whether the deft No. 1 is stopped from denying the claim of plff and defts 2 and 6 to 11 in respect of the suit lands ?

6. Whether this Court has no jurisdiction to hear This suit ?

7. Whether the suit is barred under Section 4(a) of the Bombay Revenue Jurisdiction Act ?

8. What order to pass regarding the declaration prayed for ?

F I N D I N G S .

1. Not proved. 2. The orders are valid and binding upon the plff and the deft No.2. 3. Yes. 4. Not proper. 5. No. 6. This Court has jurisdiction but refuses to interfere with the orders passed by the Revenue Authorities. 7. Not proved. 8. As below.

R E A S O N S.

By his purshis Ex. 52 the plff has given up his contentions regarding the binding nature of the mortgage decree passed in L.C.S. No. 240/-1937 on the file of the Gadag Court and has restricted his claim to the inalienability of the plaint lands on the alleged ground that they were assigned for the remuneration of the officiater for the time being . Plff has led no oral evidence. He has given a purshis at Ex. 59 that he has no oral evidence to lead. Defts 10 and 6 have been examined at Exs. 61 and 63 respectively as witnesses for the deft

No.1. Deft No. 6 is officiating as the Patil of the village, of Kurvinkoppa since the last 20-25 years. Prior to 1935 he was being paid Rs. 8/- only per year by the Government as his remuneration. On 14-7-1935 he made an application to the Collector for enhancing his -- remuneration as the amount paid to him till then was gressly inadequate (Vide Ex. 64). He was asked to approach the Prant Officer of his Division. In the course of the proceedings started by the Prant Officer the deft No. 6 and some of the owners of the Patiliki Watan lands arrived at a compromise by which they agreed that the remuneration of the officiating Patil should be Rs. 60/- per year and that all the sharers in the Patilki Watan lands should contribute in proportion to the extent of the lands held by them (Vide Ex. 62). The Mamalatdar Ron, made a report to the Prant Officer recommending that the compromise arrived at between the sharers in the Patilki watan lands regarding the remuneration of the officiator be accepted and orders issued accordingly (Vide Ex. 65). To his report he attached a statement showing the amount to be recovered from each member of the Patilki watan family (Vide Ex. 68). The Prant Officer accepted the Mamalatdar's report and passed the following order on 8-2-37.

"The proposed contributions towards the petgi of the Patil from the respective sharer's as shown in the accompanying statement (as (7) amicably settled by them) should be recovered and paid to the officiating patil annually as (4) proposed by the Mamalatdar" (Vide Ex. 65).

It is this order of the Prant Officer which the plff relies upon as the only evidence in support of his plea that the suit S. Nos. 2 and 3 which form part of one Patilki Watan lands of the village were assigned as remuneration of the officiater for the time being. Taking advantage of the above mentioned order the

father of the plff and the deft No. 2 gave an application in to the Collector, on 7-12-37 for holding that S. Nos. 2 and 3 were assigned as remuneration for the efficiator under Section 23 of the Watan Act and for issuing a certificate under Section 10 of the said act in as much as the father of the defts 3 to 5 had filed L.C.S. No. 240/-37 in the Gadag Court in which he had sought for the recovery of the money due to him from the applicant by sale of the mortgaged property (Vide Ex. 69). As usual this application was forwarded to the Prant Officer for inquiry and report and the latter in his turn sent it down to the Mamalatdar, Rom for the same purpose. The Mamalatdar's report is at Ex. 70 and reads as follows:-

"The village of Kurvinkop is a Surveyed -- Inam village and the local fund is levied by Government. Note on page 87 of the Revenue Account Mannual shows that the Kadim Iname Lands of Patil in such villages are not assigned lands. The Patilki Watan lands of this village have been divided among the Bhaubands of the S.R.W. since 1845. off and on and they have altogether use the essential Characteristic of assigned lands (Please vide Section 7 of the Watan Act and the statement of Opponent) The certificate under Section 10 of the Watan Act can be issued only where the property affected has been registered as assigned watan in the Collector's records i.e. in the Pali register (Please, vide Government rules on page 54 of Watan Act of 1928,. But the lands under reference are not so registered in the Pali register maintained under Section 67 of the Watan Act. The omission leads to the presumption that lands were not assigned until the contrary is proved. Under Section 23 of the Watan Act it is incumbant on the

55

Collector to fix the emoluments of the officiator and to do this, he will have to assign lands or cash but the Hak enquiry papers prepared in 1874 show that no lands have been assigned for the remuneration of the Officeator. Section 73 of the Watan Act emphasizes that the order of assignment should be in the hand writing of the enquiry officer. There is no such order made in this connection,

For the reasons given above the Mamalatdar reported that the application be dismissed. The Prant Officer agreed with the Mamalatdar's report and forwarded the papers to the Collector for orders (Vide Ex. 71). The last paragraph of his report reads as follows:-

"Under these circumstances I am not inclined to recommend the grant of a certificate under Section 10 of the Watan Act as prayed for by the applicant". It appears that the Collector sent back the papers and asked for a further report. Meanwhile the Prant Officer who had forwarded the papers to the Collector in June 1938 it is transferred and another had come in his place. This latter made the following obervations in returning the papers to the Collector on 30-1-1939 -- " on going through the papers of the case and in view of the authority quoted by my predecesser in his report on 30-6-38 I agree with him in holding that the lands are (not) assigned for remuneration. But the question now being whether a certificate under Section 10 of the Watan Act should be issued or not I do not think the necessity of taking this point for consideration, how. The plff who has got a decree against the applicant viz, Mr.S.M.Barchiwale (G. K. Baichwal (1)) is decidedly a Parai the lands are admittedly Watan lands. Hence the necessary certificate as requested for by the applicant may be issued". (Vide Ex. 72). Upon this report the Collector issued the certificate under Section 10 of the Watan Act on 17/21 - 4- 1939 (Vide Ex. 66). The father of the defts 3 to 5 preferred an appeal to the Commissioner S.D., who

57

cancelled the certificate on 10-1-1940. In doing so the Commissioner observes as follows :- "The Collector holds that the lands is assigned under Section 23 of the Watan Act apparently because the Assistant Collector by an order dated 8-2-1937, ordered payment of -- rent towards the officiator. This order is not an assignment under Section 23. The lands are not assigned for the remuneration of the officiator. The certificate granted is therefore incorrectly framed. The alienee in this case is a Parai. It would therefore be legal to grant a certificate but Government order prohibit the issue of a certificate in such cases (G.R.No.2917-28-4-1891 page 92, part II of Phamdnis's Watan Act). The certificate issued by the Collector should therefore be cancelled". (Vide Ex. 67). The Covernment refused to interfere with the order passed by the Commissioner and informed the plff's father accordingly on -- 7-11-40 (Vide Ex. 51).

Having narrated the history of the case, I have come to the consideration of the issues framed in the suit. The first is the most important issue in the suit. Section 23 of the Watan Act so far as is relevant reads as follows :- 'It shall be lawful for the Collector for this purpose to assign watan property as the rights thereof towards the emoluments of officiator. The existing (10) assignments shall, until altered by competent authority be taken to have been made -- under this section. With the sanction of Government the Collector may on occasion arises, alter -- the assignment and may increase or diminish it in value, such increase or diminution being made rateably among the holders in proporation to (11) the profit derived by such holders respectively from the Watan. It is not the plff's case that S. Nos. 2 and 3 in which he is interested were assigned as remuneration for the

59

officiator prior to the enactment of Bombay Act iii of 1874. Under Section 67 the Collector is asked to keep a register of lands and allowences in consideration whereof liability to serve still exists. In this register the Collector must specify (a) "The area of the lands. The names of the occupants the survey number and assessment. The quit-rent if any leviable and the net revenue alienated by Government, the amount and nature of the cash other allowences. The source from which they are payable, and the land and allowences assigned for the remuneration of officiators." Ex. 73 is a copy of the alienation register. It shows that No Patilki Watan land has been assigned or remuneration of the officiators. For a fresh assignment, the sanction of the Government is necessary under Section 23 of the Watan Act. In this case the assignment is the Assistant Collector's order mentioned above amounts to an assignment- has been made not by the Collector but by the Assistant Collector and that too without the sanction of the Government. Section 73 provides that orders under parts iii V, VI, and VII of the Act are to be passed after investigation in a particular manner. The concluding words of the se-ction read as follows :- 'In each such investigation and in removals from office under Section 58, the Collector or other officer shall record his decision with the reasons, therefor in his own handwriting". The Assistant Collector's orders does not comply with the provisions of this Section.

The note to rule 8 at page 87 of Anderson's Mannual provides :- (Slip No.15)' Kadim Inam lands of Patils and Kulkarnies in Inam villages in which no settlement has been intriduced or the original settlement is surrent and lands of inferior village servants whereever situated are assigned for remuneration. All other lands under this head are not so assigned. The village Kurvinkop is a Surveyed Inam village and local fund is levied by the

61

Government. No settlement has been intended in the village (Vide Ex. 70). It would appear from this that no lands are assigned as remuneration for the officiator. The Revenue Officers from the Mamalatdar to the Commissioner agree that no lands have been assigned as remuneration of the officiator in the part of the Patil of Kurvinkop and that the order of the Assistant Collector does not amount to a fresh assignment. I therefore hold in the negative on issue No.1. The finding of issue No. 2 follows from the finding of issue No. 1. The order of the commissioner cancelling the certificate given by the Collector is perfectly valid as also the Government's refusal to interfere (Vide Exs, 50 and 51).

The plff's suit is clearly barred, under Article 14 of the Limitation Act. The suit has been -- filed on 20-2-1942. The cause of action for the suit is stated in paragraph 8 of the plaint to have arisen on 23-2-40 i,e, the date of the commissioner's order. The final orders of the Government were issued on 7-11-40 and made known to the plff's father immediately. The suit has not been filed within one year even from the date of the Government Order. The plff's prayer if granted in effect amounts to the setting aside of an order passed by an officer of Government in his -- official capacity and therefore plliff should have filed the suit within one vear from the date of the final order i.e. 7-11-40

I have already stated that originally the Secretary of State for India in Council was impleade to the suit or deft No.1. Para 12 of the plaint stated that 'notice of this suit under Section 80 of the Code of Civil Procedure has been served on deft No.1 by registered post on 11-11-41'. It is not known to

63

whom the notice mentioned above was served. But subsquently the plff got the plaint amended by substituting the Provincial Government of Bombay in place of the Secretary of State for India. Plff gave a fresh notice to the Collector of Dharwar on 20th March 1942 (Vide Ex. 77). This notice reads as follows :-

Under instructions from my client Rangacharya R. Panchamukhi of Dharwar I have the honour to inform you that a Special Suit No. 63 of 1942 has been filed against the Secretary of State for India in Council and others. Take notice that the Provincial Government of Bombay will be added as a party deft to this suit on the expiry of the period of this notice. A copy of the plaint is herewith attached which gives all the particulars required to be given. Please treat this as a notice under Section 8 of the Code of Civil Procedure in respect of the suit mentioned above".

Section 80 of the C. P. Code provides that the notice must state" The cause of action, the name, descripion and place of residence of the plff and the relief which he claims, and the plaint shall contain a statement that such a notice has been so delivered or kept." The plaint even as amended by Ex. 15 does not contain a ~~recital~~ receipt (13) that a fresh notice was given and served on the Collector on 20-3-42. So far the Provincial Government of Bombay is concerned the notice given on 11-11-41 was not legal and proper. The plff ought to have got paragraph 12 of the plaint amended so far as the date of notice to the Provincial Government was concerned. He has ~~not~~ not (14) done so. The plaint therefore does not contain a statement that notice as required by Section 80 of the C.P. Code. not given or delivered to the Collector as representing the Provinicial Government. It is therefore defective. Further it does not fulfil the condition laid down in

65

The Un-reported Case of our High Court in First Appeal No. 308/39 which arose from this very district I therefore hold that the notice given to the Provinicial Government of Bombay was not proper.

The question of estoppal does not arise and was not pressed. The case in 28 Bom. L.R. 456 is an authority for the preperation -- that Civil Courts should not interfere with the collector's decision to grant or refuse a certificate under Section 10 of the Watan Act unless the order was made in violent misuse of authority, obvious bad faith, or reckelss disregard or wanton prevention of the law on the part of the Collector. These things have not been alleged against the order passed by the Commissioner and affirmed by the Government. I, therefore hold that ~~this~~ to this (16) Court cannot interfere under the circumstances of the case.

It was not shown how the suit was barred under Section 4(a) of the Revenue Jurisdiction Act. The point was not argued by the learned pleader for the deft on whose contention the issue was raised.

In the result I must dismiss the suit with costs. I pass the following order.

O R D E R.

Suit dismissed with costs. Plff to pay the costs of the defts 1 and 3 in different sets. The other defts to bear their own costs of any.

10-7-1944.

Sd/ M.S.Bagali.
F.C. Sub-Judge.

Typed by Read by
Compared by

by (fifteen minutes) by
True Copy

Clerk of the Court.